Public Prosecutor v Heirul Nizam bin Shahzaman & Anor

HIGH COURT (MIRI) — CRIMINAL CASE NO MYY-45B-5/12 OF 2015
ALWI ABDUL WAHAB J
17 AUGUST 2018

Criminal Law — Child Act 2001 — s 31(1)(a) — Whether sufficient evidence to convict accused for offence of neglecting deceased in manner likely to cause or expose him to harm or physical injury — Appropriate sentence for offence under s 31(1)(a) of the Child Act 2001

Criminal Law — Offences — Murder — Whether prima facie case established for offence of murder — Whether sufficient evidence to link accused with offence of murder — Penal Code s 302

The first accused, Heirul Nizam bin Shahzaman, was the husband of the second accused, Khairunnisa Khaty Johari. Both of the accused were charged under s 302 Penal Code for the murder of their own adopted son, Brian Yusof ('the deceased') on 2 July 2015. On 2 July 2015, Dr Teh Siao Hean ('PW1'), a pediatrician, received a call from Miri Hospital informing that the deceased was in a critical condition due to the injuries sustained. Prior to the deceased's admission at Miri Hospital, the deceased was first brought to the Columbia Asia Hospital by the second accused. Dr Liaw Siew Yee ('PW4'), a doctor who attended to the deceased at Columbia Asia Hospital testified that the second accused did inform her that the deceased was vomiting and both the second accused and the deceased had involved in a self-road accident a few days prior to the meeting with PW4. On 3 July 2015, PW1 attended to and examined the deceased at the children ICU ward, Miri Hospital. It was testified that there were injuries sustained by the deceased in the form of bruising and abrasions over the face, right ear and both upper lips. PW1 observed such injuries were likely of child abuse rather than the injuries due to a road accident. In defence, both the accused submitted that: (a) the prosecution had failed to prove that both the accused persons had the common intention of causing the death of the deceased; (b) if both the accused had intended to kill the deceased then they would not have rushed him for medical treatment at Columbia Asia Hospital; and (c) the evidence in its totality showed that persons other than the first and second accused who had access to the deceased could have inflicted the fatal injuries over the period of five days prior to the death of the deceased.

Held:

(1) At the end of the prosecution's case, the prosecution had proven that the deceased had died. The deceased was identified by PW1, PW4 and the pathologist ('PW8'). Based on the post-mortem report, the injuries comprised of a blunt type of injuries and healed circular lesions consistent with cigarette burnt marks. PW8 stated that the blunt injuries to the head were fatal and concluded that the cause of death was due to severe head injuries due to blunt force trauma. There was also the evidence of the orthodontist that the comparison of the bite marks to the first accused showed that all the individual scars matched the four lower teeth of the first accused. At the end of the prosecution's case, the court ruled that there was a prima facie case that had been made out and ordered both the accused to enter into their defence (see paras 9–13).

(2) There was no sufficient evidence to link the two accused persons with the murder of the deceased. Without any clear evidence on how and when the fatal injuries were inflicted on the deceased and there were persons other than both the accused who had access to the deceased, the cause of death of the deceased could not, therefore, be linked to both the accused. The prosecution had failed to prove the real perpetrator who caused the fatal injuries to the deceased. The circumstantial evidence was insufficient to form the proverbial rope in order to convict both the accused. Therefore, both the first and second accused were discharged and acquitted from the offence of murder as charged (see paras 26 & 31–35).

(3) Notwithstanding the above conclusion, after the court had carefully evaluated the whole evidence at the conclusion of the defence case, it was found that there was sufficient evidence to convict both the accused for the offence of neglecting the deceased in a manner likely to cause or expose him to harm or physical injury pursuant to s 31(1)(a) of the Child Act 2001 ('the Act'). It was clear both the accused had neglected or omitted their responsibilities as the lawful guardian of the deceased to ensure that the deceased received immediate medical attention once it was discovered that the deceased had suffered multiple injuries. The injuries were so serious and massive that it could not be said that they were inflicted without intention to cause harm by any wrongdoers. Based on the above findings, the court had convicted both the accused for the offence under s 31(1)(a) of the Act (see paras 36, 47–48 & 51).

(4) While the court acknowledged that the life of an innocent boy had been taken away due to the omissions and neglect of the deceased's adopted parents, who causes the death was still not known. Based on the mitigation raised by both the accused, the court sentenced both the accused persons to an imprisonment term of 48 months with effect from the date of their arrest and the court also imposed a fine of RM10,000 each in default 12 months imprisonment (see paras 62 & 65).

[Bahasa Malaysia summary

Tertuduh pertama, Heirul Nizam bin Shahzaman, adalah suami tertuduh kedua, Khairunnisa Khaty Johari. Kedua-dua tertuduh didakwa di bawah s 302 Kanun Keseksaan kerana membunuh anak angkat mereka sendiri, Brian Yusof ('si mati') pada 2 Julai 2015. Pada 2 Julai 2015, Dr Teh Siao Hean ('PW1'), seorang pakar kanak-kanak, menerima panggilan dari Hospital Miri memaklumkan bahawa si mati berada dalam keadaan kritikal akibat kecederaan yang dialami. Sebelum si mati dimasukkan di Hospital Miri, si mati pertama kali dibawa ke Hospital Columbia Asia oleh tertuduh kedua. Dr Liaw Siew Yee ('PW4'), seorang doktor yang mengendali si mati di Hospital Columbia Asia memberi keterangan bahawa tertuduh kedua memberitahu beliau bahawa si mati muntah dan kedua-dua tertuduh kedua dan si mati terlibat dalam kemalangan *self-road* beberapa hari sebelum perjumpaan dengan PW4. Pada 3 Julai 2015, PW1 mengendali dan memeriksa si mati di wad ICU kanak-kanak, Hospital Miri. Adalah diterangkan bahawa terdapat kecederaan yang dialami oleh si mati dalam bentuk lebam dan melecet di muka, telinga kanan dan kedua-dua bibir atas. PW1 mengamati kecederaan seperti kemungkinan penderaan kanak-kanak daripada kecederaan akibat kemalangan jalan raya. Dalam pembelaan, kedua-dua tertuduh mengemukakan bahawa: (a) pihak pendakwaan gagal membuktikan bahawa kedua-dua tertuduh mempunyai niat bersama menyebabkan kematian si mati; (b) jika kedua-dua tertuduh telah berniat untuk membunuh si mati maka mereka tidak akan bergegas untuk rawatan perubatan di Hospital Columbia Asia; dan (c) keterangan dalam keseluruhannya menunjukkan bahawa orang lain selain tertuduh pertama dan kedua yang mempunyai akses kepada si mati boleh menyebabkan kecederaan maut sepanjang tempoh lima hari sebelum kematian si mati.

Diputuskan:

(1) Pada akhir kes pendakwaan, pihak pendakwaan telah membuktikan bahawa si mati telah mati. Si mati telah dikenal pasti oleh PW1, PW4 dan ahli patologi ('PW8'). Berdasarkan laporan bedah siasat, kecederaan tersebut terdiri daripada kecederaan jenis tumpul dan kecederaan bulatan yang sembuh konsisten dengan tanda dibakar rokok. PW8 menyatakan bahawa kecederaan tumpul ke kepala adalah membawa maut dan menyimpulkan bahawa punca kematian adalah kecederaan kepala teruk akibat trauma alat tumpul. Terdapat juga keterangan orthodontist bahawa perbandingan tanda gigitan kepada tertuduh pertama menunjukkan bahawa semua parut individu sepadan dengan empat gigi bawah tertuduh pertama. Pada akhir kes pendakwaan, mahkamah memutuskan bahawa terdapat kes prima facie yang telah dibuat dan memerintahkan kedua-dua tertuduh untuk memasuki pembelaan mereka (lihat perenggan 9–13).

(2) Tidak ada keterangan yang mencukupi untuk menghubungkan kedua-dua tertuduh dengan pembunuhan si mati. Tanpa apa-apa keterangan yang jelas tentang bagaimana dan bila kecederaan maut telah dikenakan ke atas si mati dan ada orang selain daripada kedua-dua tertuduh yang mempunyai akses kepada si mati, punca kematian si mati tidak boleh, oleh itu, dikaitkan dengan kedua-dua tertuduh. Pendakwaan gagal membuktikan pelaku sebenar yang menyebabkan kecederaan maut kepada si mati. Keterangan ikut keadaan tidak mencukupi untuk membentuk tali pepatah untuk mensabitkan kedua-dua tertuduh. Oleh itu, kedua-dua tertuduh pertama dan kedua telah dilepaskan dan dibebaskan dari kesalahan bunuh seperti yang didakwa (lihat perenggan 26 & 31–35).

(3) Meskipun kesimpulan di atas, setelah mahkamah dengan berhati-hati menilai seluruh keterangan pada akhir kes pembelaan, didapati bahawa terdapat keterangan yang mencukupi untuk mensabitkan kedua-dua tertuduh atas kesalahan mengabaikan si mati dengan cara yang mungkin menyebabkan atau mendedahkannya kepada kecederaan atau kecederaan fizikal menurut s 31(1)(a) Akta Kanak-Kanak 2001 ('Akta'). Adalah jelas bahawa kedua-dua tertuduh telah mengabaikan atau menafikan tanggungjawab mereka sebagai penjaga yang sah kepada si mati untuk memastikan bahawa si mati menerima rawatan perubatan segera setelah mendapati bahawa si mati telah mengalami beberapa kecederaan. Kecederaan tersebut sangat serius dan besar sehingga tidak dapat dikatakan bahawa mereka telah mengenakan tanpa niat untuk menimbulkan kemudaratan oleh mana-mana pelaku kesalahan. Berdasarkan penemuan di atas, mahkamah telah mensabitkan kedua-dua tertuduh atas kesalahan itu di bawah s 31(1)(a) Akta (lihat perenggan 36, 47–48 & 51).

(4) Walaupun mahkamah mengakui bahawa kehidupan seorang budak lelaki yang tidak bersalah telah diambil kerana peninggalan dan pengabaian ibu bapa angkat si mati, siapa yang menyebabkan kematian masih belum diketahui. Berdasarkan mitigasi yang ditimbulkan oleh kedua-dua tertuduh, mahkamah menghukum kedua-dua tertuduh dengan hukuman penjara 48 bulan berkuat kuasa dari tarikh penangkapan mereka dan mahkamah juga dikenakan denda RM10,000 setiap satu jika ingkar 12 bulan penjara (lihat perenggan 62 & 65).]

Notes

For cases on murder, see 4(2) *Mallal's Digest* (5th Ed, 2018 Reissue) paras 2079–2096.

For cases on s 31(1)(a), see 4(1) *Mallal's Digest* (5th Ed, 2018 Reissue) paras 162–163.

Cases referred to

Public Prosecutor v Tan Keng Thong [2017] MLJU 2287, Sc (refd)

Legislation referred to

Child Act 2001 s 31(1)(a), (2)(a)
Penal Code ss 34, 302

Mohd Fuad Aziz (Wan Izzat Wan Muhamad and Nur Nisla bt Abd Latif with him) (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.
Ranbir Singh (Ranbir S Sangha & Co Advocates) for the first accused.
Gurvir Singh Sandhu (Sandhu & Co Advocates) for the second accused.

Alwi Abdul Wahab J:

INTRODUCTION

[1] The first accused ie Hierul Nizam bin Shahriman is the husband of the second accused ie Khairunnisa Khaty Johari. Both the first and second accused were charged under s 302 of the Penal Code ('the PC') for the murder of their own adopted son Brian Yusof ('deceased') aged two years plus on 2 July 2015 between 9–9.55pm at the first accused's parents' house ie Lot 2341, Jalan Piasau Jaya 3B, Piasau Jaya Phase 4, Miri.

THE CHARGE

[2] The charge against them under s 302 of the PC read together with s 34 of the same is as follows:

> Bahawa kamu pada 2.7.2015 di antara jam 9.00 malam hingga 9.55 malam, di Lot 2341, Jalan Piasau Jaya 3B, Piasau Jaya Phase 4, dalam daerah Miri, dalam negeri Sarawak, untuk mencapai niat bersama kamu telah membunuh Brian Yusof (L) (No MyKid: 130205-01-1383) dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan dan dibaca bersama Seksyen 34 kanun yang sama.

THE FACTS FOR THE PROSECUTION

[3] On 2 July 2015 at about 11pm, PW1 (Dr The Siao Hean), a paediatrician, received a call from Miri Hospital informing him that the deceased was in a critical condition due to the injuries he sustained.

[4] Prior to the deceased's admission at Miri Hospital, the deceased was first brought to the Columbia Asia Hospital on 2 July 2015 by the second accused.

[5] Dr Liaw Siew Yee (PW4) a doctor who attended to the deceased at the Columbia Asia Hospital testified that the second accused did inform her that the deceased was vomiting and both the second accused and the deceased had involved in a self-road accident a few days prior to the meeting with PW4.

[6] The next day on the 3 July 2015 at about 8am, PW1 attended to and examined the deceased at the children ICU ward, Miri Hospital. PW1 testified that there were extensive injuries sustained by the deceased in the form of bruising and abrasions over the face, right ear and both upper lips. He reported his findings on the injuries in his medical report marked as 'P4'.

[7] PW1 further stated that the history of the deceased as stated in para 2 of P4 is inconsistent with the injuries described by PW1 in P4. The history that was recorded as given by the second accused when she brought the deceased to Columbia Asia Hospital on 2 July 2015 was that both the second accused and the deceased had fallen off a motorcycle. PW1 observed that the injuries sustained by the deceased were more likely of child abuse rather than the injuries due to a road accident. He then lodged a police report marked as 'P5'.

[8] Based on the police report lodged by PW1, both the first and second accused were arrested.

AT THE CONCLUSION OF THE PROSECUTION'S CASE

[9] At the conclusion of the prosecution's case, I find that prosecution has proven that Brian Yusof ie the deceased had died. The deceased was identified by PW1, PW4 and also the pathologist ie Dr Ahmad Hafizam bin Hasmi ('PW8').

[10] PW8 had testified that there are 43 marks of injuries found on the deceased's body. Based on the post mortem report (exh P6), the injuries comprise of a blunt type of injuries (bruises and abrasions) and healed circular lesions consistent with cigarette burnt marks.

[11] According to PW8, the blunt injuries to the head were fatal in nature in which it caused severe subdural haemorrhage and subsequently led to his death. In his opinion, the deceased was either hit by a blunt object to the left side of his head or the head was pushed against any blunt and hard surface. He concluded that the cause of death was due to severe head injuries due to blunt force trauma.

[12] There was also the evidence of the orthodontist, Dr Norhayati bt Jaffar (PW3) who testified that the comparison of the bite marks to the first accused

showed that all the individual scars matched the four lower teeth of the first accused.

[13] At the end of the prosecution case, I ruled that there is a prima facie case that has been made out and ordered both the first and second accused to enter into their defence.

[14] In arriving at the said decision, it is pertinent to note that the deceased was still at a very young age and supposedly so, he ought to be under the close supervision and care of both the first and second accused before the deceased succumbed to his injuries. In the ordinary course of events, both the first and second accused must be held responsible for any consequences which may be related to the welfare and well-being of the deceased.

[15] Both the accused persons were last seen with the deceased when they sent the deceased to Columbia Asia Hospital on the 2 July 2015 at around 10pm. Hence, what actually happened to the deceased before he was rushed to Columbia Asia Hospital on the night ought to be within the knowledge of both accused.

THE DEFENCE

[16] Both the first and the second accused elected to give their evidence under oath in the witness box as DW1 and DW2 respectively. They did not call any other witnesses.

[17] DW1's evidence was that he came back home from offshore about three weeks before the death of the deceased. On the night of the incident, DW1 testified that he had come back from the mosque with his elder son and he was in his elder son's bedroom when he heard his wife DW2's scream in shock that the deceased had vomited and then he heard DW2 say that the deceased had fainted.

[18] DW1 then picked up the deceased from the floor of the bathroom and brought him to the living room where he saw the deceased seeming to have a fit. DW1 checked on the deceased pulse and when there was none, he started to apply chest compressions technique on the deceased. He felt a pulse and found that the deceased heart was beating again.

[19] DW1 then drove the car while the DW2 held the deceased next to him inside the car to Columbia Asia Hospital.

[20] The evidence of the DW2 is very much the same as that of DW1. The only thing was that DW2 was with the deceased when the deceased vomiting

A after DW2 fed him his dinner just after 9pm on that fateful night. DW2 then brought the deceased to the bathroom to clean him up. In the process of reaching for a soap by DW2, the deceased had slipped on the floor and hit the back of his head on the toilet bowl.

B **[21]** In respect of this part of evidence regarding DW2 bringing the deceased to the toilet to wash him up of his vomit and that the back of the deceased's head had hit on the toilet bowl, PW4 when asked, couldn't recall whether DW2 did inform her about this.

C **[22]** It was the defence submission that the prosecution has failed to prove that both accused persons had the common intention of causing the death of the deceased.

D **[23]** It was further submitted that if both accused had intended to kill the deceased then they would not have rushed him for medical treatment at Columbia Asia Hospital.

[24] It was also the defence submission that the evidence in its totality shows
E that persons other than the first and second accused who had access to the deceased could have inflicted the fatal injuries over the period of five days prior to the death of the deceased.

THE COURT'S FINDINGS

F

[25] The prosecution case rests entirely on circumstantial evidence as there is no direct evidence from the witnesses who saw both the accused had inflicted the fatal injuries on any parts of the deceased's body.

G **[26]** After recounting and assessing the defence's explanation with meticulous care particularly on the night when the deceased was first admitted at Columbia Asia Hospital within the time frame as stated in the charge, I find that there is no sufficient evidence to link the two accused persons with the murder of the deceased.

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[27] The time when the fatal injuries were inflicted on the deceased could not be possibly fit within the time frame as stated in the charge, which is, between 9–9.55pm on 2 July 2015.

I **[28]** When asked by the defence counsel, PW8 could not determine the exact date when the head injuries were sustained by the deceased. Based on his examination, he stated that the injuries seen on the head of the deceased are recent injuries and he estimated the age of the injuries to be less than five days old.

[29] Following the submission of the learned defence counsel which I tend to agree, if the court were to consider the maximum estimation of the age of the injuries which is five days old prior to the death of the deceased on the 4 July 2015 (on the last page of exh P4 ie PW1's report of the deceased's injuries), the injuries could have been sustained by the deceased on the 30 June 2015.

[30] As anyone including the relatives of the first and second accused had access to the deceased when the fatal injuries were sustained, the question is, who could have actually caused the fatal injuries to the deceased during the said period from 30 June–2 July 2015.

[31] Without any clear evidence on how and when the fatal injuries were inflicted on the deceased and they were persons other than both accused who had access to the deceased, the cause of death of the deceased cannot, therefore, be linked to both the accused.

[32] The closest evidence to link the accused with the offence of murder was the evidence of Nurfaezah bt Yusuf (PW11), the sister-in-law of the first accused who testified that she had seen the deceased in the evening on that day. From her observation, the deceased was healthy and active. She gave evidence in chief that when she left her parents in law's house at around 7.30pm, only both the first and second accused were in the house with the deceased and their other son and no one else. During cross-examination, she changed her evidence that she was not sure who remained in the house after she had left.

[33] Based on the above reasons, it is my findings that the prosecution had failed to prove the real perpetrator who may have caused the fatal injuries to the accused.

[34] The circumstantial evidence is insufficient to form the proverbial rope in order to convict both the accused.

[35] In the result, both the first and second accused are hereby discharged and acquitted from the offence of murder as charged.

[36] Notwithstanding the above conclusion that I have made, after carefully evaluating and considering the whole evidence at the conclusion of defence case, I find that there is sufficient evidence to convict both the first and second accused for the offence of neglecting the deceased in a manner likely to cause or expose him to harm or physical injury pursuant to s 31(1)(a) of the Child Act 2001.

[37] The evidence was adduced that the first accused had returned from

offshore about three weeks prior to the death of the deceased. Further, there was evidence that the deceased was only brought to Klinik Nuring and Klinik Haizam a day or few days after the first accused returned home from offshore.

[38] Now, if what was claimed by both the first and second accused that they were extremely concerned for the health and the safety of the deceased, the second accused would not have waited until the first accused to return home from offshore in order to seek for medical attention and treatments.

[39] This is despite the fact that there were visible and multiple old and new mark of injuries on the body of the deceased. These injuries particularly the non-fatal injuries could be visibly seen up to three weeks before the death of the deceased. The second accused, being a full housewife, she could not be heard to say that she had overlooked or unaware from what seemed to be obvious if one is so caring and concern over the wellbeing of one's child.

[40] It is illogical, in my view, with such extensive external injuries on the body of the deceased as can be seen from the photographs exh P9, the second accused thought it is only sufficient to simply applying ointment on them without seeking medical attention for proper medication and prescription.

[41] There was no clear explanation why those injuries were not attended to except for the alleged allergic from the sap of trees when the deceased was brought to Klinik Nuring and Klinik Haizam.

[42] But even so, I have doubt whether the first and second accused did actually bring the deceased to Klinik Nuring and Klinik Haizam because there is no documentary evidence and medical records produced for the scrutiny of the court.

[43] Even if I accept the defence evidence regarding the medical treatments obtained from Klinik Nuring and Klinik Haizam as true as it was also agreed by the investigating officer Insp Thomas Sulok (PW10) through his evidence, but again PW10's evidence was that the treatments sought from both clinics were meant for different matters ie ringworm and foot injury after the deceased stepped on broken glasses.

[44] It is also unthinkable for both the first and second accused to conclude and suspect what it seemed to be the marks consistent with cigarette burnt marks as confirmed by PW8 to be caused by sap from the trees described by the first accused as polka dots like marks.

[45] It was also admitted by the first accused that he had inflicted the bite

marks on the deceased which supported the findings of PW3 regardless of whether it was done in a playful manner or whether the deceased was wearing cloth or otherwise.

[46] Despite of what the first accused had done to the deceased, he had not bothered to check on that part of the deceased's body which was bitten to see whether he had caused any harm to the deceased but only to release his bite when the deceased tried to free himself.

[47] From the above evidence, it is clear that both the first and second accused had neglected or omitted in their responsibilities as the lawful guardian of the deceased to ensure that the deceased received immediate medical attention once it is discovered that the deceased had suffered multiple injuries.

[48] The injuries were so serious and massive that it cannot be said that they were inflicted without intention to cause harm by any wrongdoers.

[49] The deceased was also not brought to seek proper medical attention for the self-road accident when the second accused and the deceased fell off from the motorcycle.

[50] Although medical attention was administered and obtained at Columbia Asia Hospital on the night of 2 July 2015, it was already too late after the deceased had become unresponsive and could not be left to die at home.

[51] In the final analysis, I find that both the accused are guilty for the offence under s 31(1)(a) of the Child Act 2001 and I convict both of them accordingly.

[52] Before passing sentence on both the accused, I allow each of them to mitigate.

[53] Mr Ranbir submitting for the first accused is also submitting on behalf of the second accused in mitigation. It was submitted to the court that prior to the commencement of the trial both the accused had in fact written a representation through their respective advocates to the Attorney General's Office for the charge to be reduced to s 31(1)(a) of the Child Act 2001. The representations were made on two occasions but rejected by the prosecution.

[54] Learned counsel submitted that the court should take into account the accused's representation which must be viewed as an attempt to save the court's time and the cost from a lengthy trial. It also shows that both the accused were immediately remorseful for their plain and obvious neglect of the child.

[55] It was submitted that both the accused had been detained and spent three years and one month in prison since the time they were charged in the magistrates' court until the date of this decision. This time in prison has had a desired deterrent effect on both of them.

[56] It was also submitted that both the accused had already suffered the brunt of what they did even before the sentence was passed and this stigma of being a child abuser has brought shame not only to themselves but also to their immediate family. This stigma will never leave them wherever they go and in the future, they will be seen as a child abuser.

[57] The prosecution, on the other hand, pressed for deterrent sentence regardless of the time that the accused had already spent under remand pending the completion of trial. The sentence that is passed on both the accused must send a strong message to the public of the consequence of neglecting and abusing their children.

[58] In urging for an appropriate sentence, the learned deputy public prosecutor referred to the reports published online dated 20 July 2013 concerning the sentence meted out by the magistrates' court in Kuching for the same offence under s 31(1)(a) of the Child Act 2001. It was reported that the child abuser who is the victim's own mother was sentenced to four years of imprisonment.

[59] The learned deputy public prosecutor then cited another case *Public Prosecutor v Tan Keng Thong* [2017] MLJU 2287 where in that case, a sessions court sentenced the accused of child abuser to ten years imprisonment. The court took into account the extent of injuries suffered by the victim of five years old child who fractured his left thigh and bruises on his arms and body.

[60] In sentencing both the accused, what the prosecution is asking essentially is for this court to pass a deterrent sentence which must be longer than the period that they have served in the prison while being remanded pending the conclusion of the trial.

SENTENCING

[61] In passing sentence, I took into the account of the offence committed by both the accused persons under s 31(1)(a) of the Child Act 2001 particularly in neglecting the deceased in a manner likely to cause him physical or emotional injury and not so much of abusing which is not founded on the evidence available before me.

[62] While I acknowledge that the life of an innocent boy has been taken

away due to the omissions and neglect of the deceased's adopted parents, who causes the death is still not known.

[63] The sentence under s 31(1)(a) of the Child Act 2001 was amended in 2017 from being liable to a fine not exceeding RM20,000 or to imprisonment for a term not exceeding ten years or to both, to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding 20 years or to both.

[64] The offence was committed by both the accused persons on 2 July 2015 which is before the amendment to the Act. As the amendment is not retrospective in effect, the old sentence should be applied in the present case.

[65] Having heard and considered the mitigation raised by both the accused persons through the learned defence counsel and the submission by the learned DPP, I sentence both the accused persons to an imprisonment term of 48 months with effect from the date of their arrest and I also imposed a fine of RM10,000 each in default 12 months imprisonment.

[66] In addition to the sentence, I also order both accused to execute a bond of good behavior for a period of one year with one surety each pursuant to s 31(2)(a) of the Child Act 2001.

Order accordingly.

Reported by Mohd Kamarul Anwar